APPELLATE JURISDICTION (a)

Regular Appeal No. 73 of 1866.

PÁRIMI BÁPIRÁZU ..... *Appellant.*

BELLAMKONDA CHINNA VENKAYYA and 2 others ..... } *Respondents.*

Suit to recover damages for a malicious prosecution. The case for the prosecution having been that the plaintiffs had dishonestly broken open the defendant's grain pit, and the defence that it was done under a claim of right, the Joint Magistrate convicted the accused. His sentence was reversed by the Court of Session, and then this suit was commenced.

Held that, in the absence of any special circumstances to rebut it, the judgment of one competent tribunal against the plaintiffs affords very strong evidence of reasonable and probable cause.

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THIS was a regular appeal from the decree of W. Hodson, the Civil Judge of Guntur, in Original Suit No. 21 of 1864.

Venkatapaty Rau, for the appellant, the defendant.

Scharlieb for *Miller*, for the 1st respondent, the plaintiff—the 2nd and 3rd respondents not appearing in person or by Counsel.

The facts sufficiently appear from the following

JUDGMENT:—This was a suit brought by the plaintiffs in the Civil Court of Guntur to recover damages for a malicious prosecution.

We may observe that the plaint upon the face of it shows no cause of action ; for it alleges neither malice nor the absence of reasonable and probable cause for making the charge ; and it should not have been received in its present form.

We pass over, however, the objection to the plaint, for it appears from one part of the judgment of the Civil Judge that, in his opinion, the prosecution was wholly without

(a) Present : Bittleston, Ag. C. J., and Ellis, J.

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warrant or probable cause, and he has awarded to the plaintiffs damages to the amount of Rupees 500. We are reluctant in a case of this kind to disturb the decision of the Civil Judge—but we are quite unable to find any evidence of the absence of reasonable and probable cause. On the contrary, there is strong evidence of reasonable and probable cause in the fact that the Joint Magistrate, who tried the case, actually convicted the plaintiffs of the offence.

It appears that the charge was made under Sections 403, 461 and 506 of the Penal Code; the case for the prosecution being that the plaintiffs had dishonestly broken open the defendant's grain pit and carried away the grain, and the defence being that it was done under a claim of right.

The Joint Magistrate convicted the accused; but his sentence was reversed by the Court of Session, and then this suit was commenced.

The Civil Judge in disposing of it does not seem to have borne in mind that the burthen of proof was on the plaintiffs; at least we so infer from some of the statements in his judgment. In one place he says "whether or not these plaintiffs are entitled to damages must depend upon a fact which is not distinctly made out one way or the other by the pleadings," and again "whether this produce was raised at the time of the joint cultivation by defendant and 1st plaintiff or subsequently by the one or the other cannot be determined;" but, certainly, if any fact was not made out, upon which the plaintiffs' right to damages depended, the judgment ought to have been in favor of the defendant.

We do not know of any instance of a suit of this kind being successfully maintained after a conviction of the plaintiffs by the sentence of one competent tribunal.

In the case of *Reynolds* v. *Kennedy*, 1 Wilson 232, the attempt was made, but it failed. That was the case of a prosecution in Ireland under the Revenue Laws, and the plaintiff was found guilty and his goods condemned by the Sub-Commissioners; but their judgment was reversed by the

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Commissioners on appeal. The plaintiff brought his suit in the Irish Court of K. B., and the Jury found a verdict for the plaintiff for £371, but the Irish Court arrested the judgment on the ground that the judgment of the Sub-Commissioners (which was stated in the declaration) showed that there was a foundation for the information and prosecution. And upon appeal to the Court of K. B. in England that judgment was confirmed. Lee, C. J., saying at the end of his judgment: "Upon the whole we think the plaintiff himself has shown by his declaration that the prosecution was not malicious, because the Sub-Commissioners gave judgment for the defendant, and therefore we cannot infer any malice in him."

This seems to us very good sense, and to be as applicable to a suit of this kind in the Mofussil as anywhere else. We do not mean that in every case, the judgment of one competent tribunal against the plaintiff should be considered a conclusive answer to the suit; for it is manifest that there may be circumstances which would necessarily deprive it of any such effect, as if it should be shown that the defendant, when instituting the prosecution, had information favorable to the plaintiff, which he kept back from the Court; but we do think that in the absence of any special circumstance to rebut it, such a judgment affords very strong evidence of reasonable and probable cause; and in the case now before us we find no circumstances sufficient to destroy its effect. We must therefore reverse the decree of the Civil Judge and direct that the suit be dismissed with costs.

Appeal allowed.